

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

CIVIL ACTION NO.: 1:17-cv-00854-TDS-LPA

REBECCA KOVALICH and)
SUZANNE NAGELSKI,)
)
Plaintiffs,)
)
vs.)
)
PREFERRED PAIN MANAGEMENT)
& SPINE CARE, P.A., *et al.*)
)
Defendants.)

DEFENDANT SHERRY SPIVEY'S
MOTION FOR SUMMARY
JUDGMENT AS TO PLAINTIFF
SUZANNE NAGELSKI'S CLAIMS

NOW COMES Defendant Sherry Spivey, individually, ("Defendant" or "Sherry Spivey"), and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1 MDNC, and requests the entry of Summary Judgment in favor of Defendant as to all claims asserted by Plaintiff Suzanne Nagelski in this action. Defendant respectfully requests that Defendant's Motion for Summary Judgment be granted, upon the grounds that the pleadings, discovery materials, and other evidence of record demonstrate there is no genuine issue as to any material fact, and Defendant is entitled to judgment as a matter of law. Specifically, Defendant is entitled to summary judgment on the following grounds, among others, as explained more fully in Defendant's Memorandum of Law in Support of her Motion for Summary Judgment filed simultaneously herewith:

- Plaintiff's claim for tortious interference with contract must fail because Defendant is protected by a qualified privilege.

- Plaintiff's claim for tortious interference with contract must fail because Plaintiff has failed to proffer evidence that Sherry Spivey intentionally induced PPM to terminate Nagelski's at-will employment contract.
- Plaintiff's claim for tortious interference with contract must fail because Plaintiff has failed to proffer evidence that Sherry Spivey acted with legal malice.
- Plaintiff's claim for tortious interference with contract must fail because Plaintiff has failed to proffer evidence that Sherry Spivey acted without justification.
- Plaintiff's claim for violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1140, must fail because Sherry Spivey was not Plaintiff's employer.
- Plaintiff's claim for violation of ERISA must fail because Sherry Spivey did not discharge Plaintiff.
- Plaintiff's claim for violation of ERISA must fail because Sherry Spivey did not have a specific intent to interfere with Plaintiff's vesting in the Cash Balance Plan.
- Plaintiff has failed to produce evidence to establish a claim for punitive damages.
- Plaintiff punitive damages claim is derivative of Plaintiff's other claims, which all fail.
- Plaintiff's has not proffered evidence that Sherry Spivey's actions constituted fraud, malice, or willful or wanton conduct.

WHEREFORE, Defendant Sherry Spivey respectfully requests that Sherry Spivey's Motion for Summary Judgment be GRANTED, that Plaintiff Suzanne Nagelski's claims should be DISMISSED WITH PREJUDICE, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this the 1st day of October, 2018.

JACKSON LEWIS P.C.

/s/ Ann H. Smith _____

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**CERTIFICATE OF
SERVICE**

The undersigned certifies that on October 1, 2018, the foregoing *Defendant Sherry Spivey's Motion for Summary Judgment as to Plaintiff Suzanne Nagelski's Claims* was electronically filed with the Clerk of the Court, using the Court's CM/ECF electronic service system, which will send notification of such filing as follows:

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